

# Interstate Informed Citizens Coalition, Inc.

101 East Adrian Street, Blissfield, MI, 49228

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www.iicusa.org

December 4, 2017

Rep. Gary Glenn, Chair, House Energy Committee

Rep. Roger Hauck, Vice-chair

Rep. Donna Lasinski, Minority Vice-chair

## **The Testimony of Kevon Martis, Director, IICC, in support of House Bill 4968**

Dear Representatives:

Thank you for having hearings on this important matter. We have assembled people from across the state to testify today so I will be very brief.

The corrosive effect of wind energy conflict of interest on county and township governments is profound as these folks will explain. The ill effects of officials with wind leases deliberating upon wind energy regulations are compounded by lack of legal consensus as to what constitutes conflict.

This can be seen clearly in the recent APEX Clean Energy project proposed for Isabella County.

Along with multiple township officials with wind leases, two sitting county commissioners including Commissioner Frank Engler, first cousin of former Governor John Engle, and Commissioner George Green have leased ground to APEX. When we pointed out the conflict on social media, the local paper investigated and published the following:

*"[County Commissioner George] Green said he didn't abstain from the vote on the ordinance because he didn't have a conflict of interest; the amendment wasn't regarding a particular company and he didn't stand to profit from the changes.*

*"I've been a county commissioner for a number of years. We're a rural community and I know probably 90 percent of the people who live here," Green said. "They expect me to vote, not to abstain, and that's all I did – vote to tighten up the ordinance."*

We hear similar statements across the state on a regular basis from lease holding officials.

But what about the language of the lease itself? Is there anything in the APEX lease that should give pause to an elected official? Quoting from the APEX lease in use in Isabella County I read:

*"Tenant [APEX] shall have the right in its sole discretion and at its sole expense in the tenants name or landowners name to contest the validity, or applicability to the landowners property and the tenants property of any law, ordinance, statute, order.*

*regulation, property assessment or the like made by any governmental agency or entity.  
Tenant shall control any such contest and landowner shall cooperate with tenant in every  
reasonable way in such contest... ”*

Yes, you heard it correctly: presuming the standard APEX lease was not modified for elected officials in Isabella County, Commissioners Green and Engler signed a lease with APEX Clean Energy that gives to APEX the right to sue the same County Board of Commissioners of which they are members if they don't like the regulations being enacted by that same board. Yet APEX and the officials in question dispute the existence of a conflict.

The final version of any conflict of interest legislation must make it abundantly clear that signing lease language like this as an elected or appointed official disqualifies those officials from deliberation or voting on ANY wind related matter, pro or con.

I will stop with just this example but this is not the only wind lease we have seen with that language.

Our bottom line is this: we support the proposed language but do not feel it yet goes far enough.

Thank you for this chance to testify

A handwritten signature in black ink, appearing to read 'K Martis', with a stylized flourish at the end.

Kevon Martis, Director

Interstate Informed Citizen's Coalition  
101 East Adrian Street  
Blissfield, MI 49228

### Conflict of Interest:

When I started my career, first job in the Construction Industry was working as a draftsman for a design build contractor. The first thing I was taught was that none of us could accept gifts, or money from anyone, we were involved in Public bids for jobs building Schools, Factories, City Buildings etc. None of us could accept gifts of any kind as it could be viewed as a Conflict of Interest, and could impact our integrity as a Construction firm. I was 21 years old at that time.

When I was first appointed to my townships planning commission, (about 20 years ago) I remembered it was my job to ensure I did not violate conflict of interest, it was my duty to serve the public, not myself. We did not have official bylaws that I was aware of, but assumed it was actual law, with penalties if violated.

Flash forward to the end of 2014. Our Township was working on our wind ordinance, I had realized that there were a few issues that needed adjustment. Our Planning Commission started working on some amendments that we thought were reasonable. We were getting push back from our Township Supervisor which was not understood, until we found out that He and two others on our township board had wind contracts, and that our supervisor had been having private meetings with the developer that no one else was aware of.

The Supervisor showed up at a planning commission meeting where we were finalizing our update and were going to schedule a public hearing, he disagreed with the changes, he took a poll of each planning commission member asking if we were willing to change our recommendation, everyone stated we were not willing to change. He suddenly stated he believed that at least two members terms were up for renewal. Terms expire April 1, this meeting was in May. We found out that at the next Board meeting, the Supervisor did not reappoint the two members and purposely appointed two people who have wind contracts, one of these people openly stated at a previous planning commission meeting "He didn't give a damned about his neighbors, he wanted his wind turbine." Clearly the Supervisor was stacking the deck with conflicted members.

The outcome was the next few meetings the ordinance recommendations were sadly reduced to what the wind developer wanted, every vote was 4 to 3 against reason. The Planning Chair at one of the public hearings actually asked the developers representative, if the proposed changes will make them happy. Many angry residents were there, and again, what the developer wanted was voted in 4 to 3. 3 of the 4 had wind contracts, one was just swayed by the intimidation of the other 3, and the Township supervisor, who was at every meeting, and was using his authority to intimidate.

Many residents spoke to the Planning Commission saying what they were doing was violating conflict of interest, they also spoke to the Township Board, They submitted over 100 signatures on a petition requesting they observe conflict of interest. All on deaf ears.

I became Planning Commission Chair in April of 2016, The tide started to turn, I implemented bylaws for the Planning commission, with a very clear Conflict of Interest policy, including if there is not a quorum due to too many with conflict, names will be put in a hat and only enough names drawn to make a quorum to be able to conduct business.

Luckily for our community the people fought for their rights. I had never considered running for any public office, but realized, we can not always rely on someone else to do it. I ran for office, and won 70 percent of the vote in November 2016. We replaced 3 of the 5 on the Township Board, only 1 remaining still has a wind contract and will not be allowed to vote on any wind related issues going forward. I am now Township Supervisor, and was also able to finally put a safe and fair ordinance in place. I have never understood how conflict of interest law does not apply to County or Township Officials, Legislators like you all have stiff penalties if you are caught violating this, why does it not apply to people like myself? I welcome the idea of some serious penalties for those who choose to fill their own pockets instead of leading their community properly.

Leo Sonck

Bridgehampton Township Supervisor

Presentation to the House Energy Policy Committee  
by Norman A. Stephens  
12-12-17

Mr. Chairman, members of the Committee, my name is Norm Stephens and I am from Almer Township which is located in Caro, Michigan about 30 miles east of Saginaw in the middle of the THUMB--the same Almer Township that is presently being sued in Federal Court by wind energy giant, NextEra.

I will be brief as there are others present here today who will undoubtedly give you specific examples of the conflict-of-interest that existed or presently exist in their communities. Conflict-of-interest is pervasive state-wide and is the major, if not the only reason, industrial wind turbines exist in Michigan today.

After attending ten months of planning commission and regular Board meetings in Almer Township and in other neighboring townships in 2016, I realized the townships that were on the cusp of approving WIND energy-friendly wind ordinances, had some level of conflict-of-interest: meaning, one, two, three and sometimes more officials of the planning commission, the regular Board, or the zoning board of appeals had wind-leases. Some of these "conflicted" officials re-cused themselves during their meetings, but some did not.

I then began inquiring from people from around the state about conflict-of-interest. I asked them if they were aware if there were ANY townships in the state hosting wind turbines that didn't have conflict-of-interest officials at the helm. After compiling my list of townships and counties hosting wind turbines, I then proceeded to ask 150 to 200 people in attendance at meetings that I attended in Tuscola, Isabella, and Midland Counties---the same question. Those meetings, by the way, had people attending from various locations throughout Michigan.

Of the twenty-five townships and counties hosting wind turbines, every single one of those twenty-five has conflicted officials. Every single one. If you can find a township or a county without conflicted officials, you will NOT find a wind development there. That's 25 to 0. Even the Detroit Lions do better than that.

I strongly urge you to develop a strong conflict-of-interest policy, one with an effective deterrent for committing a violation, a consequence that also can be enforced. I believe the threat of a consequence for a FOIA violation and for an OPEN MEETINGS ACT violation, for example, has helped concerned citizens overcome ineffective and suspicious government actions on several occasions in our area. That same deterrent for conflict-of-interest issues is imperative. If no action is taken, that list of twenty-five townships and counties will continue to grow-----and grow unfairly for handcuffed residents. I would prefer to thank you for acting on this; but I do thank you for your time and your consideration.

Norman A. Stephens  
91 E. Deckerville Rd  
Caro, Michigan 48723

989-598-1859

## **Wind Energy Conflict of Interest Joyfield Township, Benzie County, Michigan**

My story begins in 2010 when Benzie County decided to drop county zoning and leave that duty to the individual municipalities. The Joyfield Township Board agreed at that time that there was no need to continue zoning for our rural township and that we did not need to worry about regulating land use or any development in our community.

So township residents were caught off-guard when it was leaked that a Duke Energy / agricultural community meeting had occurred regarding an industrial wind energy development for our area. Large land owners, particularly farmers, were signing leases, including 3 of the 5 Joyfield Township officials. The other 2 trustees, both from the agricultural community, included one with immediate family members with signed leases, and one receiving heavy pressure to sign.

The township officials did not disclose the leases until pressed, and even then, did not consider a wind energy lease a conflict of interest in conducting township business regarding our newest developer, Duke Energy. In fact, the nation's largest utility company had an attorney present at our Township Board meetings to monitor the discussions.

The major problem we had was not necessarily failure of the Board members to recuse themselves from the situation. Instead, they chose to just not discuss the issue – even facing months of significant community concerns and questions. When pressed, they stated they had no health, safety or welfare concerns for residents regarding the development. They even eliminated the possibility for residents or speakers to be added to the agenda.

Conflict of interest – you bet! How can any Board member, promised money and signing a non-disclosure agreement, in a township in which they voted to drop zoning be objective or sensible regarding a multi-million dollar development? Especially with the utility company attorney present at the meetings monitored their behavior and discussions.

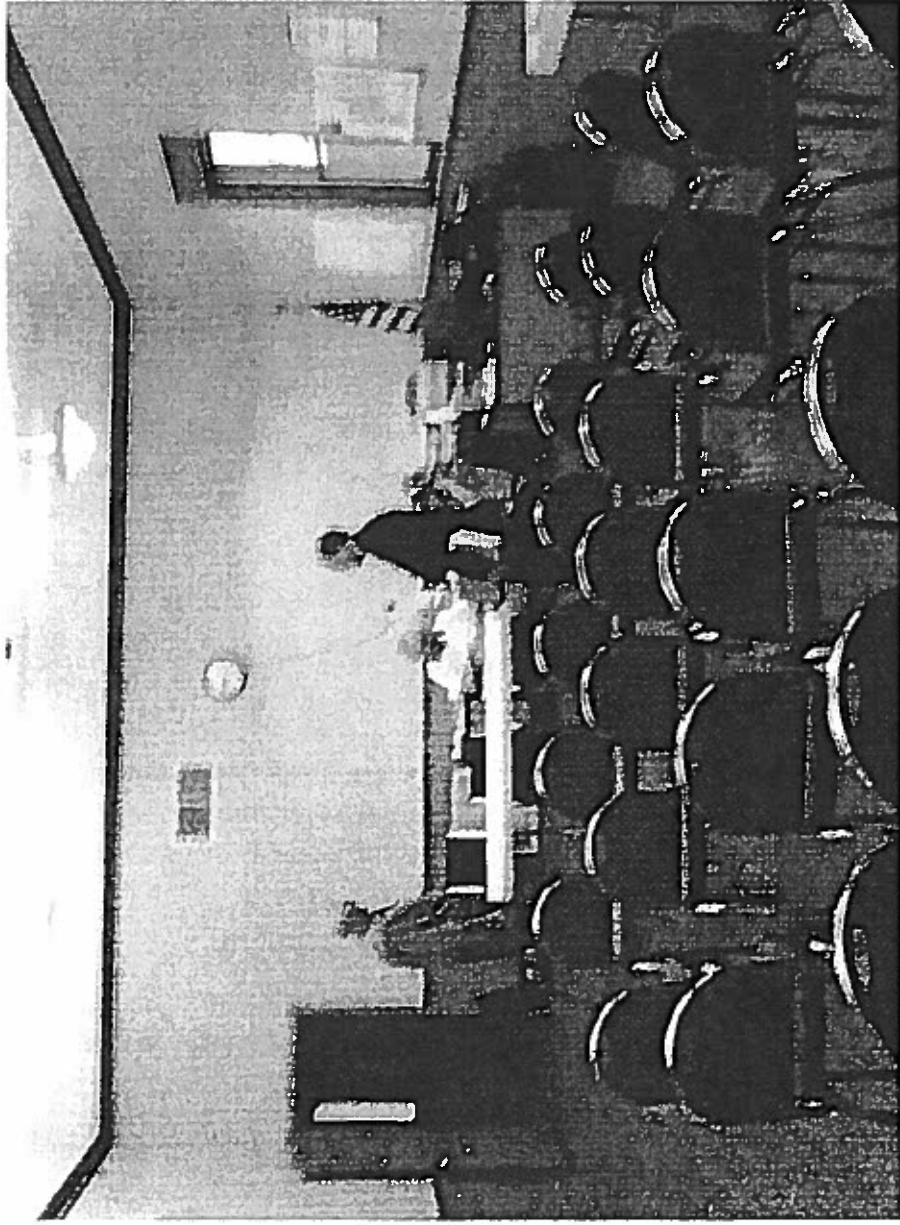
Without a voice or an opportunity to be heard, we were forced to pursue a recall of the 3 township officials with wind energy leases. It was unheard of and against all odds, but the residents prevailed. A 360 million dollar development without any land use regulations or anything in writing was just too much.

Our township now has a new Board and Planning Commission, with a recently adopted zoning ordinance ratified by the residents in the November 2017 election. The system works when public good rises above individual interests and the community is allowed to regulate development.

This proposed wind energy development with Board member conflict of interest will have a negative impact on our community for generations. Families and friendships have been divided and the wounds are raw. Large energy corporations prey on communities such as ours. Thank goodness we fought and succeeded, although paying a heavy price.

I am proud of my community regarding wind energy and addressing local land use, and I thank you for the opportunity to share my story.

Jim Evans, concerned citizen  
PO Box 89  
Benzonia, MI 49616  
231-871-0044



What could these three board members be discussing with an attorney for the nation's largest utility company thirty minutes after board meeting adjournment on May 4, 2011?

These board members cannot fulfill their private wind farm lease obligations and at the same time effectively perform their full township duties.

Is expected personal financial gain from an out-of-state developer interfering with Joyfield Township decision making?

Conflict of interest? You decide.

**Conflict of Interest... Vote YES on the Recall**

Hello my name is Jon Block, I speak to you today as a lifelong resident, business owner, and public official in Marion township. In late 2015 I was an appointed planning commissioner of Marion Township dealing with the largest land use project to come to the thumb of Michigan, Michigan Wind Three. The proposed industrial wind generation complex was aggressive in its design to say the least. While Exelon Corp the developer of MW3 sought land use approval for their project, I found substantial shortfalls in the design and plan of the Industrial complex pertaining to the health safety and welfare of the residents I was charged to protect. My questions and inquiries pertaining to the project were met with aggressive and threatening responses by fellow planning commissioners and township officials. Seeing my colleagues actions as out of character I investigated their personal connection to the proposed project.

My investigation uncovered that 3 out of 5 of the township planning commission including the chair held lease agreements for MW3. It also uncovered lease agreements for 2 out of 5 elected board members. Making the findings of my investigation public only furthered the conflicted members aggressive actions that ultimately culminated in a death threat against myself.

I found myself in a precarious position, a multi billion dollar corporation in bed with a majority of my colleagues all with their sights set on me. While I could write a bestselling novel describing the events that followed I will skip the details out of respect for your time.

Ultimately the corporation's and conflicted officials interests were defeated at the ballot box. What would have certainly become the case study on how not to build industrial wind generation complexes was stopped. Along with the loss of their personal interest 4 of 5 of the conflicted officials lost their public positions.

Regardless of the perceived victory for the vast majority of the local citizens we were left with the collateral damage that comes with any type of war. In all my years of business and community involvement every controversy pales in comparison to what a Wind Complex and conflict of interest will do to a community. This highly infectious disease infiltrates neighbourhoods , families, and life long friends. What was once a beautiful community knit together slowly by the hand of time is now a tattered remnant of the once great social fabric we knew.

I want you to understand that I spoke to you here today not as a victor of the battle that ravaged Marion Township. I spoke to you today as a man who has lost a great deal, because when Wind and Conflict of interest comes to your hometown everyone losses.



Gentlemen,

Thank you for this opportunity.

Our nightmare in Ellington Township (we're near Caro in Tuscola County) began sometime in early 2014 when three of our largest landowners got together and negotiated a secret contract with NextEra.

One of these landowners was our township Supervisor – Mr. Lockwood.

We know about this secret contract because one of the other two landowners bragged about it in one of our subsequent meetings.

To the best of our knowledge, based on land record documents, Mr. Lockwood began receiving payments from NextEra mid-2014.

For the rest of 2014, Supervisor Lockwood proceeded to usher a new “weak and incomplete” wind ordinance thru our planning commission. He attended every meeting.

In January of 2015, Supervisor Lockwood gave a summary of the new wind ordinance and then made the motion to approve it. His motion passed by full vote. Below are the actual minutes.

Duane Lockwood gave an update on the zoning ordinance for the wind turbines, which were approved by the county. Duane Lockwood made a motion for the additions for the wind farm ordinance to be added in the existing zoning ordinance, with Joddy Ehrenberg seconding. Motion passed with full vote.

We have all the minutes for these meetings and there is no record that Supervisor Lockwood ever declared that he had a conflict of interest or recused himself.

10 months later, in December of 2015, I found out about all of this when I started asking Supervisor Lockwood questions at our church during a Christmas decorating event. Mr. Lockwood was a part of our bible study.

In the following weeks, I contacted 50 neighbors and found only one person that knew that NextEra was working on a wind turbine project in Ellington township.

In January of 2016, we began pleading with Supervisor Lockwood and our board to stop the process and fix the defects in the wind ordinance.

He told us it was too late, that NextEra will be filing a special land use permit very soon, that we can come to the public hearing, but it won't make any difference because this project is a “done deal”. He told us that changing the ordinance now is not an option because NextEra will sue us and that a Moratorium cannot be considered until after NextEra submits their application for a special land use permit.

Here we are 2 years later. We've spent 10's of thousands of dollars, countless hours researching and preparing presentations, we've attended over 100 extremely tense meetings (Ellington, Almer and others) and removed 4 of the 5 Ellington board members (including Supervisor Lockwood). It's only by many small miracles that we've made it this far. And yet we still are unable to file a lawsuit against the

Township to void and replace the tainted 2015 wind ordinance because, per our legal counsel, we have to wait until after NextEra has been granted a special land use permit using this 2015 ordinance. And when we finally get this opportunity, our legal fees for this suit could be \$50,000 or more. Paid for by the residents.

Ellington Township is already buried in lawsuits. One from NextEra (pending in federal court), one from Mr. Lockwood and company to get his lame duck, illegal PC appointments reinstated (currently at State appeals court) and one from 2 Ellington residents to get Mr. Lockwood's illegal PC appointments nullified.

Going forward, it seems we have two options: 1. Continue to forge ahead and hope NextEra and Lockwood and company don't bleed us dry with litigation. 2. Throw in the towel and let NextEra and Lockwood have their way with our Township.

I hope and pray it's not the latter.

To fix this COI problem, I believe our state laws need to be strengthened as follows:

1. Clarify the definition of COI to include all relatives.
2. Update current laws to clarify how a board must proceed when they no longer have a quorum due to COI officials who have recused themselves.
3. Never allow a quorum or majority of COI officials to participate or vote on an issue.
4. Require that any township decision tainted by COI is declared null and void and must be re-voted.
5. Stiffen the penalties for undeclared COI so they are at least as strong as FOIA and OMA violations.
6. Make it easier to rectify situations where COI officials refuse to step down or recuse themselves. When a township board refuses to re-vote on decisions that were later found to be tainted by COI, don't leave it to the residents to file an expensive lawsuit.

It's no exaggeration to say that Ellington and Almer townships have been dragged thru hell for the past 24 months. Our community has been ripped apart. It will take years, maybe decades, to recover.

I believe all our division and strife could have been prevented if there had been a law on the books, back in February of 2016, that would have forced the Ellington board (without Supervisor Lockwood) to re-vote on approval of the 2015 wind ordinance.

Please make a way for future townships to avoid this nightmare. Please remove this COI tactic from the wind developers game plan.

Thank you again for your time and consideration,

Mike Pattullo

Ellington Township

Caro, MI

989-550-1180

# Interstate Informed Citizens Coalition, Inc.

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www.iiccusa.org

December 11, 2017

Rep. Gary Glenn, Chair, House Energy Committee

Rep. Roger Hauck, Vice-chair

Rep. Donna Lasinski, Minority Vice-chair

## **The Testimony of Joshua J. Nolan, Esq., in support of House Bill 4968**

Dear Representatives:

My name is Joshua J. Nolan. I am both a Director and General Counsel for the Interstate Informed Citizen's Coalition, Inc. ("IICC") in Blissfield Michigan. We are a bi-partisan rural ratepayer advocacy group and, consistent with our bipartisan nature, I am a life-long Democrat originally from Monroe County, Michigan.

I am testifying today on the behalf of the IICC's statewide supporters in support of House Bill 4968. And while we support the effort this legislation's attempt to further clarify the definition and remedy for conflict of interest among planning commissioners, we feel that it does not yet go far enough to resolve the rampant conflict of interest issues I have witnessed throughout the State.

In my role as legal counsel for the IICC, and as private counsel for many individuals and citizen's groups living inside the footprint of existing or proposed wind developments across the State, there has not been a more vexing issue than the matter of conflict of interest among county and township officials. Wind energy development is more land intensive than any other type of development I have witnessed and it requires many hundreds of parcels in a township or county. As such, the opportunity for conflict is greatly magnified in contrast with more common zoning issues which typically involves only one or two parcels.

As you have heard from previous testimony today, conflict of interest is widespread and in our experience has almost become a pre-condition for a wind developer seeking local approval for their wind developments. And this is compounded by the fact that municipal attorneys often cannot agree on what constitutes a conflict of interest under current Michigan law. And even when they acknowledge the existence of a conflict, many do not agree on how to resolve that conflict of interest.

This issue becomes even more complicated when there are so many members of a Township Board or Planning Commission that have conflicts of interest that recusal of all conflicted members would preclude them from convening a quorum. The standard approach to resolving the lack of a quorum due to conflict is to employ the "rule of necessity." This rule in essence

says that there *must* be a quorum in order to transact business; therefore conflicted people are requalified to vote on wind related zoning issues.

But even this is problematic. If three of five planning commissioners have wind leases, do you requalify all three? Or do you requalify just one conflicted member, the bare minimum to restore a quorum? And do the restored members regain their ability to deliberate or simply vote? Or should their participation be limited solely to the formation of a quorum, but still deny the conflicted member a right to vote?

The most recent Michigan Zoning Enabling Act compelled townships to adopt bylaws addressing conflict of interest at the planning commission level. But it has been our experience that such bylaws are easily circumvented. Either the bylaws contain a provision that allow the members to “correct” the conflict simply by declaring the conflict and promising to be impartial or the Planning Commission simply votes to amend the bylaws prohibiting their deliberation and carry on despite the obvious conflict.

Let us be clear: we do not believe there is a perfect solution to conflict of interest issues. But we do wish to make the following suggestions:

1. The definition of conflict must be made clear. I will not go into detail on this matter but we have furnished written testimony from another legal adviser to the IICC, attorney James Fuscaldo, which offers clear suggestions.
2. With respect to addressing the “rule of necessity,” at bare minimum legislation must state that only enough members will be re-enfranchised to restore a quorum. In other words, if 3 of 5 PC members have wind leases, only one will be have voting privileges restored, not all three. These may be selected by drawing straws or some other mechanism of chance. Another solution may permit the appointment of voting alternates, though of course the question of who selects the alternates could present its own difficulties.
3. With respect to planning commissions regulating conflict of interest in their bylaws, we strongly support local control of this and all zoning matters. But the legislation must make it clear that this local rule does not permit a Planning Commission to make otherwise unlawful conflict of interest legally permissible.
4. While HB 4968 is limited in scope to planning commissioners, today’s testimony makes it clear that language addressing conflict at the township trustee board level and county commissioner level is also necessary. And I encourage you to explore that issue further.

The IICC was founded in 2011 in part to confront corruption in township and county government. It has often been a lonely battle. On the behalf of the statewide supporters of the IICC, I wish to thank you for your attention to this important issue.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be "J. Na" or similar, written in a cursive style.

Joshua Nolan, Esq., Co-director and Legal Counsel

Interstate Informed Citizen's Coalition  
101 East Adrian Street  
Blissfield, MI 49228

## **Michigan's House Energy Conflict of Interest Hearing 11-30-2017**

**My name is Cristi Currie. I am handicapped and thus could only send a letter to be read at this hearing instead of showing up in person.**

**My husband, John Gavre, and I supported the building of wind farms for over a decade by donating extra money in Wisconsin to We Electric in our utility bill payments to it to have wind turbines built elsewhere in this state. We were not investors. We just gave free money to get the wind industry going. And now we live in one on the Garden Peninsula in Upper Michigan, where Heritage Sustainable Energy is continuing to expand what it has here. Thus, I've gotten to see up close how a wind developer and his supporters conduct themselves. And it's not a pretty picture that they paint.**

**Public hearings have been nasty and raucous because wind supporters continually interrupt, bully, threaten and have acted verbally and physically aggressive with concerned citizens and Garden township board members. So, law enforcement was called in. Even Heritage's business partner was calling people names.**

**Our Fairbanks Township here had formed a committee to have the Heritage leases evaluated by a legal firm that specializes in such things. This review gave (12) summary observations. (See address and phone no. below for these.) And its conclusion was:**

**(Quote) "The lease reviewed appears to be below industry and best practices standards. Due to a lack of clarity and the omission of many industry standard provisions, the lease creates liability exposure to the lessors and the community as a whole that can be significant and offer little in the way of assured or insured protections with no compensation for the risks assumed." (End of Quote)**

**After that was said, the Fairbanks Township Board, which had lease signers on it, suppressed its results at its public hearing by not letting it be presented. This suppression was brought up and said by the Fairbanks committee member's wife to the Delta County Board.**

**The Fairbanks Township Board, with its lease signing members on it, also voted on the wind company's transmission line plan. And they did this, while knowing that their legal lease review had said:**

**(Quote) "The inclusion of transmission expenses in determining royalty payments is not industry standard and poses significant opportunities to diminish expected payments." (End of Quote) Citizens then complained and Delta County rescinded this vote.**

**So, I definitely support any legislation that will end the corrupt practice of conflict of interest.**

**Cristi Currie**

**5959 oo.25 Road, Garden, Michigan 49835 (906)286-3890 or (414)238-8236**

December 10, 2017

To: State of Michigan House Energy Committee

Rep. Gary Glenn, Committee Chairperson

Rep. Roger Hauck, Vice Chairperson

Rep. Donna Lasinski, Vice Chairperson

Re: Testimony and Commentary Pertaining to House Bill 4968

Honorable Members of The Michigan House of Representatives

Please accept this written commentary in support of constructive revisions to the proposed amendments set forth in HB 4968.

As you know the purpose of the amendments are to resolve public concern pertaining to potential conflicts of interest that zoning board members may have on matters brought before them. My specific concern pertains to zoning and land use decisions on the construction of wind turbines, solar panels and their relevant setbacks from defined residential uses when zoning board members participating in such decisions have an undisclosed direct or indirect beneficial interest in the outcome of these decisions.

The proposed amendment set forth in HB 4968 limits the potential conflict of interest to a "DIRECT FINANCIAL INTEREST". It is my consider opinion that the use of this test to determine the existence or absence of a conflict of interest limits the capability to uncover serious conflicts of interest albeit such conflicts may not be within the definitional framework of a "direct financial interest".

How so you ask? As you know zoning for wind turbines, solar panels and their relevant setbacks from adjoining residential uses pertains exclusively to land use and land use development. The use of open land that is concurrently used for agricultural or grazing purposes appears to be well suited for these developments. As a result such land exists primarily in rural areas, and property interests in the land may have a long and valued history of family and inter family ownership interests. These interests may have been acquired and preserved through a variety of legal mechanisms to preserve and ensure property wealth and ownership within the family and extended family interests.

As you know there are a variety of lawful alternatives to protect and preserve interests in property. There are numerous ways one may acquire a financial or beneficial interest in land to preserve and protect property ownership and devisable interests. However, these mechanisms often times would not qualify as a DIRECT FINANCIAL INTEREST in the strict sense of the meaning of the word "direct or financial". Permit me to list a few for illustrative purposes only:

1. Partnerships
2. Family corporations
3. Limited Liability Corporations
4. Trusts , and
5. Joint Venture agreements, just to name a few.

As you know many township zoning commissions are staffed by local people desiring to serve their community. Likewise, many zoning commissions by the very nature of their legislative creation are intended to become a revolving door. Turn over in the composition, nature and character of zoning commissions is constant. New people will bring with them new interpretations on the legal meaning of the word "direct and financial". These words may have different interpretations from one planning commission to another; from one township to another. Inconsistent and even contradictory interpretations may arise.

Regrettably, use of the terms "direct and financial" may not prevent real world conflicts of interest, or compel transparency and full disclosure of potential conflicts of interest for review when and where land and property interests are concerned. Especially when dealing with land interests and the variety of ways land and property interests can be sheltered to protect a beneficial interest, but without incurring a "DIRECT FINANCIAL INTEREST".

My concern in the use of the words DIRECT FINANCIAL INTEREST is this. It may be an escape hatch that could actually facilitate and perpetuate conflicts of interest and prevent them from being disclosed rather than preventing them or disclosing them. The electorate are always clamoring for transparency from their political representatives.

To address this concern I am including proposed language for the Committee's discussion and consideration in view of this letter. Consider it a starting point.

#### Proposed Language

"A member shall disqualify himself or herself from a vote in which the member has either a direct or indirect financial, pecuniary, or other beneficial interest in



the matter under consideration. Failure of a member to disclose a potential conflict of interest, or to disqualify himself or herself as required by this subsection constitutes malfeasance in office. Any vote cast by a member of the planning commission that has a conflict of interest as defined herein, and that pertains to the matter voted on shall be considered void ab initio.

Members of the public may submit in writing to the planning commission, or orally in a public hearing that is subsequently confirmed in writing to the planning commission, information that raises the possibility of a potential conflict of interest by any member of the planning commission. The planning commission shall defer voting on any matter where a potential conflict of interest is presented as set forth herein.

The existence of an existing conflict of interest disclosed either by a commission member to the planning commission or by the public may be investigated by the planning commission, or it may be referred by the planning commission to the prosecuting attorney of the county wherein the planning commission has zoning authority and jurisdiction for investigation and resolution. The matter under consideration by the zoning commission wherein the question of a potential conflict of interest has been raised shall be held in abeyance until the matter of a conflict of interest is resolved, or until the member having, or alleged to have, a conflict of interest disqualifies himself or herself."

Thank you in advance for your timely consideration of this matter.

James J. Fuscaldo\*  
4249 South Whitehill Road  
Cedar, Michigan 49621

\*About the Writer:

The writer is a retired attorney with degrees in law and science.

The writer has a Bachelor of Science in Pharmacy from Drake University in Des Moines, Iowa, and a Juris Doctorate in Law from John Marshall Law School in Chicago, Illinois.

Prior to retirement:

The writer was employed by Broadlawns Polk County Hospital in Des Moines, Iowa; Eli Lilly and Company, Indianapolis, Indiana; Northwestern University Medical School, Chicago, Illinois, as a Pharmacist and Pharmaceutical Representative.

The writer was employed by The Dow Chemical Company, Midland, Michigan as a lawyer and staff attorney in many diverse practice groups.

The writer has been actively engaged in the following areas of the law during his 30-year legal career with The Dow Chemical Company.

- International Law. (European Economic Community and Latin America)
- Intellectual Property Law.
- Commercial Business Law, including compliance with Federal Antitrust and Unfair Competition Laws.
- Federal Bankruptcy, Mergers and Acquisitions.
- Federal, Food, Drug and Cosmetic Law and compliance with Federal Trade Commission Regulations.
- Product liability litigation pertaining to prescription and nonprescription drugs.

In addition to serving as a staff counsel within various legal practice groups within Dow early in his career, the writer served as General Counsel for Dow Chemical Latin America and General Trademark and Copyright Counsel for The Dow Chemical Company. In these capacities he was part of Dow's corporate legal management and supervisory team before retirement.